SSM

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL APPELLATE JURISDICTION

CRIMINAL WRIT PETITION NO. 3048 OF 2005

Shri Ashish S. Patankar ... Petitioner

Vs.

The State of Maharashtra and Anr. ...Respondents

Mr. M. P. Dalvi i/b R. B. Thakare for the petitioner.

Shri N. Y. Gupte for the respondents.

CORAM : SMT. RANJANA DESAI, J.

DATED : 7TH NOVEMBER, 2006.

P.C. :-

1. In this petition there is a challenge to the judgment and order dated 28/10/2005 passed by the Additional Sessions Judge, City Civil and Sessions Court, Bombay. By the impugned order, the learned judge has set aside the trial court's order of issuance of process against the 2nd respondent - accused in case No. 223/S/2005 pending before the 26th Metropolitan Magistrate Court Borivali - (West), Mumbai.

2. I have heard the learned counsel for the petitioner. The grievance made by the learned counsel is that the impugned order is passed without hearing the petitioner. He submitted that the learned judge could not have set aside the order of issuance of process without hearing the petitioner. In support of his submission, the learned counsel relied on the judgment of the Supreme Court in ***U. P. S. C. Vs. Papaiah and others, AIR 1997 Supreme Court 3876.***

3. I have also heard Shri Gupte the learned counsel appearing for the respondent. In my opinion, reliance placed by the learned counsel for the petitioner on UPSC' scase (supra), is apt. Hence, in the circumstances of the case, the following order will meet the ends of justice.

4. The impugned judgment and order is set aside only to the extent it sets aside the issuance of process against the accused. The learned Sessions Judge is directed to hear the petitioner and pass appropriate order thereafter in accordance with law. Till such time as the learned Sessions Judge passes appropriate order after hearing the petitioners, the proceedings pending in the 26th Metropolitan Magistrate Court Borivali (West), Mumbai. shall remain stayed.

5. The petition is disposed off in the afore-stated terms.

(SMT. RANJANA DESAI, J.)